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DOCKET FILE COPY ORIGINAL

February 7, 1997

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: MM Docket Nos. 96-222, 91-221, and 87-8
Notice of Proposed Rule Making
Policies and Rules Concerning Broadcast Television National Ownership, Television Broadcasting, and Television Satellite Stations

Dear Mr Caton:

On behalf of CBS Inc., enclosed herewith for filing with the Commission are an original and eleven copies of *Comments of CBS Inc.* in response to the Commission's *Notice of Proposed Rule Making* in the above referenced proceeding.

Should there be any questions concerning this filing, please contact Howard F. Jaeckel at (212) 975-4595 or the undersigned at (202) 457-4515.

Respectfully submitted,

CBS Inc.

By: _____
Stephen A. Hildebrandt, Esq.
Associate General Counsel and Assistant Secretary
CBS Inc.

enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Broadcast Television National Ownership Rules	)	MM Docket No. 96-222
	)	
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8
	)	

COMMENTS OF CBS INC.

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February 7, 1997

HFJ/18526

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
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Broadcast Television National Ownership Rules	)	MM Docket No. 96-222
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	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8
	)	

COMMENTS OF CBS INC.

CBS Inc. ("CBS") hereby respectfully submits its comments in response to the Commission's Notice of Proposed Rule Making ("Notice") in the above dockets. In its Notice, the Commission seeks comment on (1) whether to continue to disregard satellite station ownership for purposes of the national multiple ownership rule (the "satellite exemption"); and (2) whether and how to incorporate local marketing agreements ("LMAs") into the calculation of national audience reach for purposes of that rule.[1]

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[1] The Commission also tentatively concludes in its Notice that it should replace its use of Arbitron's Areas of Dominant Influence ("ADIs") with Nielsen's Designated Market Areas ("DMAs") to define television markets for purposes of its national ownership rule, a proposal which we believe to be non-controversial. Further, the Commission indicates that it will defer consideration of whether to continue to attribute UHF facilities with only one-half the audience reach of VHF stations until its 1998 biennial review of the broadcast ownership rules, which is mandated by the Telecommunications Act of 1996.

As set forth below, CBS believes that the satellite exemption should continue to be retained for all purposes. In our view, the changes in the Commission's national television ownership rule adopted as a result of the Telecommunications Act of 1996 (the "1996 Act") do not change the policy considerations that have long supported the exemption of satellite stations from all of the Commission's multiple ownership restrictions, including the national ownership rule. Further, CBS supports the Commission's tentative conclusion that, to the extent that LMAs are found to be attributable interests,[2] the audiences of the brokered and brokering stations should not be counted twice, for purposes of the national audience reach limitation,[3] when those stations are in the same television market. More broadly, we also support the Commission's proposal that television audiences not be "double-counted" for purposes of determining national audience reach when stations in the same market are commonly owned pursuant to any liberalization of the television duopoly rule which the Commission may adopt, or any waiver of that rule.[4]

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2 The Commission is currently considering whether television LMAs should be considered attributable ownership interests in its Further Notice of Proposed Rulemaking in MM Dockets Nos. 94-150, 92-51 and 87-154, FCC 96-436 (released November 7, 1996) ("Attribution Further Notice").

3 Under the Commission's national television ownership rule, no party may have attributable interests in television stations which have an aggregate national audience reach exceeding 35 percent. 47 C.F.R. § 73.3555(e)(1).

4 See 47 C.F.R. § 73.3555(b). Possible revisions to the Commission's local television ownership rule are currently being considered in connection with the Commission's Second Further Notice of Proposed Rule Making in MM Dockets Nos. 91-221 and 87-8, FCC 96-438 (released November 7, 1996) ("Local TV Second Further Notice").

1. Satellite Stations

Satellite television stations are currently exempt from the restrictions of both the Commission's local and national ownership rules.[5] As the Commission recognizes in the Notice, this exemption was originally adopted, among other reasons, to encourage the development of satellite television service to smaller communities which would not be able economically to support a full-service television station.[6] Applying the multiple ownership rules in a manner which would inhibit the operation of satellite television stations in underserved markets, the Commission has observed, would not be in the public interest.[7]

In the present Notice, the Commission tentatively concludes that satellites should continue to be exempt from the national ownership rule when a satellite station operates in the same television market as its parent, but not when the two stations operate in different markets. The Commission reasons that, in the intra-market situation, there is no ground for counting the market twice for purposes of determining audience reach, since the national television ownership rule, as amended by the 1996 Act, is concerned with potential audience rather than actual viewing. Thus the Commission states:

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5 See, 47 C.F.R. § 73.3555, Note 5. Television satellite stations are full power terrestrial broadcast stations authorized by the Commission to retransmit all or part of the programming of a parent station that is ordinarily commonly owned. See, Report and Order, Television Satellite Stations, 6 FCC Rcd 4212 (1991).

6 Notice at ¶ 17.

7 See, Second Further Notice of Proposed Rulemaking in MM Docket No. 87-8, 6 FCC Rcd 5010, 5010-11 (1991).

> "[I]f a licensee acquires a television station in a market within which it already operates a station, it has not extended its audience reach in that television market for purposes of the national audience reach limit; the television households in that market are already counted, given the existence of the licensee's non-satellite station."[8]

The Commission notes, however, that where parent-satellite combinations serve different markets, the audience reach of the parent station is extended into the satellite's market. The Commission also expresses the view that, although counting satellite stations for purposes of the television national ownership rule may have discouraged the operation of satellite stations in the past, any such disincentive has now been minimized by the elimination in the 1996 Act of the former numerical limitation restricting ownership to a maximum of 12 stations. Because satellite stations by definition generally serve sparsely populated areas, the Commission reasons, counting the television households in the market in which a satellite is located should add relatively little to a group owner's total audience reach. On this basis, the Commission tentatively concludes that the satellite exemption is no longer necessary to encourage the operation of satellite stations in cases where the parent and the satellite serve separate markets.[9]

CBS supports the Commission's proposal -- both in the satellite context and more generally -- that television audiences not be double-counted for purposes of the national audience reach limitation when a group owner has interests in more than one television station in the same market. However, we believe that the partial elimination of the satellite exemption to the national ownership rule proposed by the Commission would needlessly discourage the

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[8] Notice at ¶ 21.

[9] Notice at ¶ 23.

operation of satellite stations by group owners, and might in some situations lead to a loss of television service in communities where few over-the-air stations are available. As explained below, under the Commission's licensing policies, satellite authorization will generally be granted only where the applicant can make a convincing showing that full-service operation would not be economically feasible. Where the alternative to satellite service is no service at all, the Commission's policies should not create any disincentive to the operation of a satellite station by any broadcaster -- including a group owner.

In its 1981 Report and Order[10] reviewing its satellite station policy, the Commission adopted a stringent test for determining when satellite status should be granted. Under that standard, an applicant may qualify for a rebuttable presumption in favor of the grant of satellite authorization by showing that (1) the proposed satellite would provide service to an underserved area;[11] (2) no City Grade contour overlap would exist between the proposed satellite and its parent station; and (3) no alternative operator would be prepared to construct or to purchase the station for operation on a full-service basis.[12] If the above test is not met, satellite status will not be granted absent "compelling" circumstances.[13]

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[10] Report and Order, Television Satellite Stations, 6 FCC Rcd 4212 (1991).

[11] In order to establish the existence of an "underserved area," a satellite applicant must show either (1) that there are two or fewer full-service stations licensed to the proposed satellite station's community or (2) that 25% or more of the area within the proposed satellite's Grade B contour, but outside the parent's Grade B contour, receives a Grade B signal from four or fewer stations. Id. at 4215.

[12] Id. at 4214-15.

[13] Id. at 4212.

Moreover, in order to meet the third prong of the above test, a satellite applicant must produce specific evidence of the unavailability of an alternative full-service operator, such as a lack of serious inquiries from prospective purchasers following the listing of the station for sale with a broker, or a history of television station failures in the market.[14]

It is clear, in other words, that satellite authorization will be granted only where a strong showing has been made that the frequency in question would otherwise likely remain unutilized, thus resulting in the loss of potential television service to an area which is already underserved. To penalize group owners for operating a satellite station in such circumstances would clearly contradict the Commission's long-established policy of encouraging satellite service to such communities.

Although the repeal of the former 12 station numerical limit of the national television ownership rule might mitigate the disincentive to satellite operation which elimination of the satellite exemption would necessarily entail, there can be no question that such a disincentive would still exist. Thus, charging the television households in a satellite market against a group owner's total under the national audience reach limit would clearly discourage those group owners close to their maximum from providing satellite service. Since the partial elimination of the satellite exemption proposed in the Notice would not advance the Commission's objectives of promoting diversity and competition to any significant extent -- and

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[14] Id. at 4215.

since any such effect would clearly be insufficient to outweigh the possible loss of satellite service to underserved communities -- it should not be adopted.

2. Local Marketing Agreements

The Commission is now considering the attribution of LMAs and their permissibility under its local television ownership rules in other pending rule making proceedings.[15] In its Attribution Further Notice the Commission has tentatively concluded that, where one television station brokers more than 15% of the broadcast hours on another station in the same market pursuant to an LMA, it should be deemed to have an attributable interest in that station.[16] The instant Notice raises the question of whether, in such a situation, the television households in the relevant market should be counted twice against the owner of the brokering station for purposes of the audience reach limitation of the national television ownership rule, and tentatively concludes that such double-counting would be inappropriate.[17]

CBS agrees that a group owner should not be charged twice with the same television audience when it has attributable interests in more than one station in a market. As the Commission observes, the national television ownership rule, as amended by the 1996 Act, is concerned with the percentage of the television audience which is within a particular group

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15 See, Local TV Second Further Notice and Attribution Further Notice, cited in notes 2 and 4, supra.

16 Attribution Further Notice at ¶ 27.

17 Notice at ¶ 27.

owner's reach, not the number of television stations which it owns or the number of viewers who actually watch those stations.[18] Given the Act's focus on potential audience, we submit that the Commission's analysis is plainly correct in concluding that the television households within a single market should not be charged twice to a party which has interests in more than one station in that market. Moreover, this analysis should apply not only to LMAs and satellite stations, but should extend to all commonly owned stations within a market -- including stations which are commonly owned pursuant to any amendments which the Commission adopts to the television local ownership rule, or any waivers of that rule.

In this connection, the Commission seeks comment on how its proposal not to double count the television audience of commonly owned stations in the same market "would affect programming diversity and opportunities for small stations, or stations owned by women and minorities."[19] Initially, we note our belief that how the Commission treats such situations for purposes of its national ownership rule will have no effect whatsoever on the local markets in which the Commission has traditionally sought to preserve diversity and competition.[20] The permissibility of common ownership of stations in the same market (or the operation of same-

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18 Notice at ¶ 21 and n. 51.

19 Notice at ¶ 22.

20 The Commission has previously emphasized "the lack of relevance of a national multiple ownership rule to the availability of diverse and independently owned radio and TV voices to consumers in their respective local markets." Amendment of Rules Relative to Multiple Ownership of AM, FM and Television Broadcast Stations, 100 FCC 2d 17, 19 (1984) ("Multiple Ownership"). Likewise, it has noted that "the fact that local competitors may share common ownership with stations in other markets is unimportant in terms of competitive harm." Id. at 41-42.

market LMAs) should be considered by the Commission on its own merits in the Commission's pending local ownership and attribution proceedings. It would make no sense indirectly to attempt to discourage such common local ownership and LMAs -- or the operation of satellite television stations -- through a restrictive interpretation of the national ownership rule, when that rule is essentially irrelevant to the policy considerations raised by such arrangements.[21] Further, with respect to the issue of opportunities for women and minorities, the Commission has long recognized that its national ownership rules "w[ere] not designed to foster minority ownership in the broadcasting industry and ha[ve] not yielded such an effect."[22] The laudable goal of increasing minority ownership of television stations should be pursued by means more likely to further that end.

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[21] In this context, it is worth noting that the Commission "has determined that [LMAs], subject to some general Commission guidelines, can provide competitive and diversity benefits to both the brokering stations and to the public." Local TV Second Further Notice at ¶ 81. Similarly, it has long been Commission policy to authorize the operation of satellite stations in order to promote additional television service to areas which would otherwise be underserved.

[22] Multiple Ownership, supra, 100 FCC 2d at 48.

Conclusion

For the reasons set forth above, CBS respectfully urges the Commission to retain the satellite exemption from its multiple ownership restrictions as presently formulated, and to refrain from "double counting" the audience in a television market against the national audience reach limit of an entity which has interests in more than one station in that market.

Respectfully submitted,

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February 7, 1997

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